

#### **§ 655.46**

must be conducted at all times of day when safety-sensitive functions are performed.

(h) Each employer shall require that each covered employee who is notified of selection for random drug or random alcohol testing proceed to the test site immediately. If the employee is performing a safety-sensitive function at the time of the notification, the employer shall instead ensure that the employee ceases to perform the safety-sensitive function and proceeds to the testing site immediately.

(i) A covered employee shall only be randomly tested for alcohol misuse while the employee is performing safety-sensitive functions; just before the employee is to perform safety-sensitive functions; or just after the employee has ceased performing such functions. A covered employee may be randomly tested for prohibited drug use anytime while on duty.

(j) If a given covered employee is subject to random drug and alcohol testing under the testing rules of more than one DOT agency for the same employer, the employee shall be subject to random drug and alcohol testing at the percentage rate established for the calendar year by the DOT agency regulating more than 50 percent of the employee's function.

(k) If an employer is required to conduct random drug and alcohol testing under the drug and alcohol testing rules of more than one DOT agency, the employer may—

(1) Establish separate pools for random selection, with each pool containing the covered employees who are subject to testing at the same required rate; or

(2) Randomly select such employees for testing at the highest percentage rate established for the calendar year by any DOT agency to which the employer is subject.

#### **§ 655.46 Return to duty following refusal to submit to a test, verified positive drug test result and/or breath alcohol test result of 0.04 or greater.**

Where a covered employee refuses to submit to a test, has a verified positive drug test result, and/or has a confirmed alcohol test result of 0.04 or greater, the employer, before returning the em-

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ployee to duty to perform a safety-sensitive function, shall follow the procedures outlined in 49 CFR Part 40.

#### **§ 655.47 Follow-up testing after returning to duty.**

An employer shall conduct follow-up testing of each employee who returns to duty, as specified in 49 CFR Part 40, subpart O.

#### **§ 655.48 Retesting of covered employees with an alcohol concentration of 0.02 or greater but less than 0.04.**

If an employer chooses to permit a covered employee to perform a safety-sensitive function within 8 hours of an alcohol test indicating an alcohol concentration of 0.02 or greater but less than 0.04, the employer shall retest the covered employee to ensure compliance with the provisions of § 655.35. The covered employee may not perform safety-sensitive functions unless the confirmation alcohol test result is less than 0.02.

#### **§ 655.49 Refusal to submit to a drug or alcohol test.**

(a) Each employer shall require a covered employee to submit to a post-accident drug and alcohol test required under § 655.44, a random drug and alcohol test required under § 655.45, a reasonable suspicion drug and alcohol test required under § 655.43, or a follow-up drug and alcohol test required under § 655.47. No employer shall permit an employee who refuses to submit to such a test to perform or continue to perform safety-sensitive functions.

(b) When an employee refuses to submit to a drug or alcohol test, the employer shall follow the procedures outlined in 49 CFR Part 40.

#### **§ 655.50 [Reserved]**

### **Subpart F—Drug and Alcohol Testing Procedures**

#### **§ 655.51 Compliance with testing procedures requirements.**

The drug and alcohol testing procedures in 49 CFR Part 40 apply to employers covered by this part, and must be read together with this part, unless expressly provided otherwise in this part.